

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 8, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on July 8, 2005, beginning at 10:00 a.m. The meeting was tape-recorded and the tapes are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox, Commissioners Ricky Wright and Mike Joyner were present at the meeting.

MINUTES OF JUNE 3, 2005 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the June 3, 2005, meeting into the record. Seconded by Commissioner Wright. So Ordered. Chairman Fox made a motion to approve the minutes from the June 3, 2005, meeting. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioners Wright and Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright and Commissioner Joyner stated that they found no conflicts of interest. Chairman Fox recused himself from the following hearing cases: # 4, Codys Pub, #33, Gas Center 3, #39, S E Food Mart 4, and 1st Offense Cases: #3, Kiva Grill, #15, Wilco 392, #23, Dillons Grocery and # 24, Fat Pelican.

I. HEARING CASES - 70 Listed

Chief Deputy Counsel Fred A. Gregory stated that Archie Whitty, District Manager, along with the owner, Frances Susman Harris, was present to speak in regard to case #34, Kyles Guilford B P. Mr. Whitty stated that they were asking the Commission for a reduction in the fine. He went on to state that the employee did sell alcohol to a minor and that all employees are put through a training program when they are hired and quarterly. Mr. Whitty said that he felt that they were going above and beyond in trying to educate the employees. Sometimes one employee slips through and doesn't quite understand what he signs. The store their policy is when an employee sells to a minor, they are terminated.

Chairman Fox asked how many stores do they operate. Mr. Whitty stated that they operate nine stores in North Carolina. Mrs. Harris stated that they hired the employee because he was a college student who lived near the college and needed to pay his tuition. She went on to state that they never had any problems out of him until this happened. They waited until he got his last paycheck so he could pay his tuition and they had to let him go.

Commissioner Wright asked Mr. Whitty what he would expect or ask that the fine or penalty to be besides nothing. Mr. Whitty relayed the question to Mrs. Harris. Mrs. Harris asked if \$500.00 was ok. Chairman Fox asked Timothy W. Morse, Assistant Counsel, if he had anything to add. Mr. Morse stated that this was a standard situation, no particular aggravation. Commissioner Fox stated that it looked like the violations started around the time the Mrs. Harris's husband either was no longer active in the business or had passed away. Mr. Whitty confirmed that it was true. Commissioner Joyner made a motion to reduce the penalty to 20 days or \$2,000.00, with the stipulation that they get in contact with Danny Sellars to arrange a BARS class. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that Mr. Ajay Hasmukhbhai Patel was present to speak on behalf of case #22, Richfield BP. Mr. Patel stated that he runs a small country store in a small community. Mr. Patel was asking for a break. His company upgraded the software. The software used to ask the clerk if the person was born before 1987, and now the software asks the clerk if the person was born after 1987. Mr. Patel stated that it has caused some confusion and he made a mistake.

Commissioner Wright had a question as to the amount of the penalty. Chief Deputy Counsel Fred A. Gregory stated that the penalty was \$1,200.00 instead of \$1,000.00 because the amount is aggravated \$200.00 if the permittee makes the sale.

Commissioner Joyner asked Mr. Patel why the software was upgraded. Mr. Patel stated that it wasn't taking Fleet Cards, so they had to upgrade the software. Commissioner Joyner asked if clerks had to type in the birth date from the drivers' license. Mr. Patel stated that they just answer the question, "yes" or "no". As soon as a clerk punched in an alcohol sale, the register would ask the clerk "if the person was born after 1987." Then the clerk would type in yes or no.

Chairman Fox asked Mr. Patel how much beer do they sell. Mr. Patel stated that they buy about \$1,500.00 a week. Chairman Fox told Mr. Patel that he had the ability to take a suspension for 12 days. Mr. Patel stated that it would hurt his business and the customers might think that they were not selling alcohol and not show up again.

Commissioner Wright made a motion to ratify the offer in compromise as it was presented, but was willing to cut the monetary amount and give a six-day suspension. Mr. Patel stated that he would rather not take a suspension because it would hurt his business. Chairman Fox stated that he had the option of leaving it as it was and take the 12 days suspension, or pay \$1,200.00 fine and the other option was that he could take a 6-day suspension and \$600.00 fine. Mr. Patel stated that he was hoping the Commission could reduce it to \$700.00 or \$800.00. Chairman Fox asked Mr. Patel what he wanted the Commission to do, even though they had already given him a couple of options. Mr. Patel said that he was hoping for a little bit of a break. Chairman Fox again stated the options the Commission was give him. Mr. Patel stated he was willing to pay \$700.00 or \$800.00 even though he couldn't afford it. Chairman Fox asked Mr. Patel if he wanted an \$800.00 fine and a 4-day suspension. Mr. Patel said that they didn't want any suspension of the permits. Chairman Fox stated that the penalty stands. Chairman Fox made a motion to ratify the signed offer in compromise as it is. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that Mr. Gary Bevell was the owner of EZ Mart and Tackle. The case was not on the agenda. Mr. Gregory went on to state that Mr. Bevell showed up today and wanted to be heard. Mr. Bevell stated that he runs a sporting goods store.

He further stated that he had the store back in the mid 1990's, but he sold the store in 1998. He never sold alcohol to anyone less than 21 years of age. Mr. Bevell also stated that he bought the store back and sold it a number of times and finally he bought the store back. After having the store back for about a month, an employee sold alcohol to a person less than 21 years of age, while Mr. Bevell was present in the store. He stated that he had just taken a break when the sale occurred. Mr. Bevell stated that the fine was not the problem; the embarrassment of losing his permits was the problem.

Commissioner Wright stated that he want to be sure he understood Mr. Bevell in saying that the problem was not in the fine, but in possibly losing his permits. Mr. Bevell stated that he had built up his tackle business to having one of the largest tackle businesses in eastern North Carolina and it would be an embarrassment to have to lose his permits, he was embarrassed anyway.

Chairman Fox asked Chief Deputy Counsel Fred Gregory if he had any reason to doubt Mr. Bevell stating that he has had permits in the past. Mr. Gregory stated that he didn't have proof, but he had no reason the doubt Mr. Bevell.

Chairman Fox made a motion to reduce the fine to \$750.00 under the stipulation that he set up and attend a BARS class with Danny Sellars. Seconded by Commissioner Wright. So Ordered.

Commissioner Wright made a motion to adopt hearing cases #4, Codys Pub, #33, Gas Center 3, #39, S E Food Mart 4, and 1st Offense Cases: #3, Kiva Grill, #15, Wilco 392, #23, Dillon's Grocery and # 24, Fat Pelican. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of the ones, which had been earlier ratified. Seconded by Commissioner Wright. So Ordered.

II. FIRST OFFENSE CASES – 32 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on July 8, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. D and M Kwik Mart – 2655 North Webb Street, Selma, NC 27576
2. Da Vincis Italian Restauarnt – 1101 North Greene Street, Morganton, NC 28655
3. Kiva Grill – 8211 Market Street, Suite EE, Wilmington, NC 28405
4. Express Mart – 502 Salisbury Avenue, Albemarle, NC 28801
5. Exxon Travel Plaza – 5990 Asheville Hwy, Hendersville, NC 28791
6. K and A Food Mart – 721 East Washington Street, Kinston, NC 28501
7. M and N Citgo – 101 US 70 and I-95, Selma, NC 27576
8. Quick Snack – 3750 Battleground Avenue Space A-B, Greensboro, NC 27410
9. Ri Ra the Irish Pub – 208 North Tryon Street, Charlotte, NC 28202
10. Sams Mart 20 – 7740 Speedway Boulevard, Concord, NC 28028
11. Sams Mart 39 – 6401 Old Statesville Road, Charlotte, NC 28213
12. Short Stop Food Mart 12 – 401 East Anderson Street, Selma, NC 27576
13. Trade Mart 68 – 2901 US Hwy 17 South, Chocowinity, NC 27817
14. Vass Shell – 3451 US Hwy 1, Vass, NC 28394
15. Wilco 392 – 5701 Oleander Drive, Wilmington, NC 28403
16. Tienda Flores – 1012 South Main Street, Graham, NC 27257

17. Run In 811 – 230 Sparta Road, North Wilkesboro, NC 28659
18. Manav Mart – 2187 Charlotte Hwy 21, Mooresville, NC 28115
19. Mexicasas Restaurant and Grill – 4475 Hwy 49 Suite 200, Harrisburg, NC 28075
20. Also 25 – 1904 US Hwy 52, Albemarle, NC 28001
21. King Supermarket – 352 South Adkin Street, Kinston, NC 28501
22. Carolina Fast Mart 5 – 200 Poplar Tent Road, Concord, NC 28026
23. Dillons Grocery – 214 Southern Boulevard, Wilmington, NC 28401
24. Fat Pelican – 8 South Lake Park Boulevard, Carolina Beach, NC 28428
25. Han Dee Hugos – 402 South Poplar Street, Elizabethtown, NC 28337
26. Han Dee Hugos 12 – 350 Hwy 70 East, Selma, NC 27576
27. Alco 19 – 1607 NC 24 and 27 Bypass, Albemarle, NC 28001
28. Sams Mart 29 – 3024 Central Avenue, Charlotte, NC 28205
29. Wal Mart Supercenter 1661 – 4101 West Vernon Avenue, Kinston, NC 28501
30. Food Lion 593 – 4826 Country Club Road, Winston-Salem, NC 27102
31. Food Lion 1062 – 6810 Shallowford Road, Lewisville, NC 27023
32. Smokers Express 3476 – 3302 South Holden Road, Greensboro, NC 27407

Chairman Fox made a motion to approve the remaining Offers in Compromise for the First Offense cases that were not earlier ratified. Seconded by Commissioner Wright. So Ordered.

Hearing case #69, J B'z and case #70, Furniture City Lodge 282 were add-on cases. Assistant Counsel K. Renee Cowick stated that neither one of the businesses had returned the offers in compromise in time. J B'z had already posted on their website that they would be closed during the suspension dates. She further stated that she had already notified Alcohol Law Enforcement regarding the suspension. Both businesses started their suspensions on July 1, 2005.

III. OTHER BUSINESS

Chairman Fox set Commission Meeting dates for the remaining year as follows: October 14, 2005, November 9, 2005, and December 9, 2005.

Commissioner Wright asked Mr. Chris Valauri, President of North Carolina Beer and Wine Wholesales Association if he had any news from his industry. Mr. Valauri stated that there have been no serious assaults on the beer, wine and spirits or excise taxes. Everyone at the General Assembly lives in the next election cycle, so they are living in the 2006/2008 cycle and are not living in the moment.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division